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On Behalf of the American Association of Airport Executives
And
Airports Council International – North America
Senate Aviation Subcommittee
Hearing on The Aviation Delay Prevention Act
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Chairman Hutchison, on behalf of the thousands of men and women across the country who manage and operate America's airports, I appreciate the invitation to testify today on legislation you have introduced to tackle aviation delays. It is fitting that the first hearing held in this subcommittee under your leadership is focused on addressing this pressing problem.

As you are well aware, aviation capacity constraints and the resulting delays have reached the crisis point. The Department of Transportation Inspector General recently reported that 1 in 4 flights last year were either delayed, cancelled or diverted, affecting 163 million passengers. That represents a 20 percent increase over 1999, which was a record year in terms of delays.

Unfortunately, the frustration and inconvenience that travelers face today in dealing with an overcrowded and overburdened aviation system will only grow worse. This spring and summer promise to be as miserable as the last several as more and more flights are crowded into the system. Passenger traffic within the next decade is expected to explode from today's 680 million to one billion annually. Continued growth in the cargo and general aviation segments will cause additional strain.

Despite the huge growth in air travel over the past decade, the construction of new runways and other critical capacity enhancing projects hasn't kept pace with increased demand. Since 1991, only six runways were added at the largest airports where delays are concentrated. These runways were opened in Las Vegas in 1991, Detroit in 1993, Salt Lake City in 1995, Dallas/Fort Worth in 1996, Philadelphia in 1999, and Phoenix in 2000. Although a number of additional runway projects are now planned, the process for reviewing and approving these projects threatens to delay their construction.

50 Miles of Runway Required to Meet Future Demands

As a result, many of the nation's busiest airports don't have the capacity to accommodate today's traffic let alone the crush of activity projected for the immediate future. In its 1998 Aviation Capacity Enhancement Plan, the Federal Aviation Administration cited 27 airports that are seriously congested, experiencing more than 20,000 hours of delay annually. FAA forecasts that unless airport capacity investments are made, the number of seriously congested airports will grow to 31 by 2007.

Much of that delay is due to the lack of runway space. According to preliminary discussions with the FAA, that fact will be verified in its soon-to-be released capacity benchmarking study, which is focused on determining the capacity situation at major airports. Runway space, the study will likely suggest, is the single greatest solution to adding capacity and reducing delays.

Two miles of runways at the top 25 delay-prone airports would take care of virtually all of the delay in the system. The solution, therefore, is 50 miles of runways.

With Additional Federal Funding in Place, Environmental Streamlining Should Be a Priority

Congress took a giant step forward in addressing the capacity crisis last year with the passage of FAA reauthorization legislation that provided significant increases in capital funding for airports and air traffic control modernization. For airports, an increase in Airport Improvement Program funding and the modest increase in the federally imposed cap on Passenger Facility Charges will go a long way toward reducing the \$3 billion annual investment gap that we faced during the previous decade. Ensuring that AIP is fully funded at \$3.3 billion in fiscal year 2002 will provide further help.

While continued federal support is a must, the most serious challenge today in enhancing capacity lies in putting additional resources to work as quickly as possible on critical projects such as runway construction at the nation's most congested airports. Unfortunately, the process for approving these proposals routinely gets bogged down in a seemingly endless maze of overlapping, duplicative and onerous environmental reviews. Runway projects routinely take 10 years from start to finish and many take longer.

As the General Accounting Office pointed out at a hearing last October on why runways cost so much and take so long to build, overlapping federal and state environmental requirements can delay airport projects "without necessarily providing commensurate environmental benefits." The problem is also becoming more evident throughout the aviation industry. Several airline CEOs and a number of other groups have recently voiced support for expediting the process to approve runways.

We appreciate your recognition of the problem and your willingness to address environmental streamlining in the bill we are discussing today. We look forward to working with you as this measure moves through the legislative process.

Accelerating Process Could Add Capacity Without Harming the Environment

While no one questions the wisdom or need for strong environmental stewardship, it is clear that the current system unnecessarily delays many critical projects for the sake of process rather than environmental benefit. In our view, the need for aviation infrastructure improvements is fundamentally compatible with the need for environmental progress. It is clear, however, that the interests of our aviation system will be best served by accelerating the pace at which delay-reducing projects are moved forward. Such acceleration should not relax our national agenda of environmental progress.

From the standpoint of water and air quality, noise, and dozens of other environmental concerns that help to define the end product, it matters little whether the process of moving the project forward takes weeks, months, years, or decades. What is critical is getting the appropriate environmental safeguards identified early and built in as the project progresses. Airports have proven effective in accomplishing that goal, and we look forward to working with this subcommittee and the Congress to implement some common-sense procedural changes that will accelerate key project approval while maintaining strict environmental safeguards.

In the absence of such changes, we are doomed to live with a system that routinely drags runway projects out a decade or more. We simply don't have that kind of time.

The Current Process: Numerous Players, Numerous Considerations

Typically, the current environmental review process for major capacity enhancing projects begins with the incorporation of the project into an airport master plan, which is subject to FAA review and approval.

Master plans almost always include preparation of initial environmental review, including key analysis of project purpose, the need for the project, and potential alternatives to the project. Master plan documents are part of the record for environmental review and provide much of the data the FAA and other agencies require for that review.

Beyond the airport master plan, the National Environmental Policy Act of 1969 (NEPA) creates the procedural framework for review of environmental impacts and for compliance with applicable federal, state, and local laws. NEPA procedures apply to “Federal actions” that “significantly affect the quality of the human environment.” Many critical capacity projects such as new runway construction typically meet that definition and as such are required to follow NEPA guidelines. In addition, several states have “NEPA-like” requirements that must be followed.

The NEPA process for airports is managed by the FAA as the lead agency coordinating activities with other federal and state agencies as well as with the public. Other agencies or individuals involved with the NEPA process include, but are not limited to, the Environmental Protection Agency, the Fish and Wildlife Service, the Army Corps of Engineers, the Advisory Council on Historic Preservation, the state historical preservation officer, and state air and water pollution agencies.

These agencies administer the following laws, which typically are addressed as part of the NEPA process or parallel to it: The National Historic Preservation Act; The Farmland Protection Policy Act; the Department of Transportation Act; the Clean Water Act; the Clean Air Act; the Endangered Species Act; the Airport and Airway Improvement Act; the Comprehensive Environmental Response, Compensation and Liability Act; and the Resource Conservation and Recovery Act, among others. In addition, Environmental Justice must be addressed.

Building on the initial environmental review contained in the master plan, FAA and the airport work with the appropriate agencies under NEPA and other statutes to develop an environmental analysis (EA) or a more detailed environmental impact statement (EIS) when necessary. This documentation must adequately define the purpose and need for the project, identify project alternatives, and discuss the affected environment, including nearby land uses, population characteristics, future plans for the area and existing environmental conditions. FAA manages the EA/EIS process.

The EA/EIS must also discuss the environmental consequences in 20 defined impact categories. They are: noise; compatible land use; social impacts; induced socioeconomic impacts; air quality; water quality; publicly-owned land of a public park, recreational area or wildlife and waterfowl refuge or land of an historic site; historic resources; biotic communities; endangered species; wetlands; floodplains; coastal zone management; coastal barriers; wild and scenic rivers; farmland; energy supply; light emissions; solid waste impact; and construction impacts.

Finally, the EA/EIS must address conflicts with other governmental objectives, policies, laws and plans; adverse environmental consequences which cannot be avoided; irreversible and irretrievable commitments of resources, and mitigation of adverse environmental impacts. When this lengthy process is finally navigated, a Record of Decision (ROD) is issued by the FAA and construction is allowed to proceed. In many cases, however, the ROD spurs legal challenges that can further delay the project.

With so many players and so many considerations, it is not difficult to imagine why the process takes so long to complete. The attached document provides a visual account of the 44-step approval process.

Case Study: Memphis-Shelby County Airport Authority

Consider the Memphis-Shelby County Airport Authority and their efforts to add infrastructure to accommodate anticipated growth at Memphis International Airport. Before construction ever began, the planning processes included two master plans, two FAA/industry capacity plans, one FAR Part 150 noise compatibility plan, one environmental assessment, and one environmental impact statement. These efforts consumed nearly ten years of time to complete before construction began.

At Memphis, the initial master plan – which included the construction of a third parallel runway, the reconstruction and extension of an existing runway, the construction of new and expanded taxiways, terminal building expansion, improvements to ground transportation facilities, and the continued expansion of air cargo facilities – was begun in 1984 and completed in 1986. This phase included the development of an FAA approved Part 150 noise compatibility program to insure that capacity projects were tied to needed noise mitigation projects.

An environmental assessment of the master plan followed in 1987 to identify and quantify the effect of the proposed expansion on noise, water quality, air quality, and other impacts on communities surrounding the airport. Due to the requirement for multi-agency reviews by numerous local, state, and federal agencies, the EA took five years to complete. During this time, each agency worked at its own pace and often with conflicting viewpoints on impacts and needed remediation.

Upon completion of the EA in 1991, the Airport Authority began the environmental impact statement. As part of this process, the FAA required extensive reviews and supplemental studies to be completed as a result of comments from the Environmental Protection Agency and other agencies. The attorneys for the FAA were particularly deliberative during this period because of concerns about legal challenges. A Record of Decision was finally issued in May 1993 some seven years after the beginning of the environmental review process.

Thankfully, the construction aspect of the process has been more successful. The parallel runway was completed in 1996 and construction and extension of the existing runway was completed in September of 2000. In the end, the process took 16 years at a cost of \$250 million. Noise mitigation projects consumed another \$150 million.

The Memphis example illustrates the problem with the current system. At no time in the planning or review process did the airport oppose or attempt to avoid any mitigation efforts recommended or required by local, state, or federal agencies. The extensive time delays were due to lengthy review times and disagreement among the reviewing agencies as to appropriate mitigation actions and the apparent lack of priority given to streamlining and expediting the environmental review process.

Other Examples Illustrate Similar Problems

It should be noted that Memphis is not an isolated case. Phoenix, which opened a new runway in October of 2000, offers another example of the difficulties in getting critical runways built. After deciding on proceeding with construction of a third runway at the airport in September of 1989, the EIS process began in May 1990. It wasn't until January of 1994, however, that a ROD was issued due in large part to the same sort of delays that plagued Memphis. Litigation, another common cause of delay, followed the release of the ROD further delaying construction.

Orlando is expected to complete a new runway in 2003, some 15 years after the project was approved by the FAA and the Airport Authority. Again, permitting and study activities consumed an inordinate amount

of time before construction every started. Detroit added one runway in 1993 and will complete another in December 2001. In both instances, the projects will have taken eight to ten years.

Streamlining the Environmental Review Process

With flight delays and growing concern about system gridlock and with critical runway projects planned at key airports including Detroit, Minneapolis, Orlando, Denver, Houston, Miami, Charlotte, Atlanta, Boston, Cincinnati, Washington Dulles, Seattle, St. Louis and Dallas/Fort Worth, it has never been more important to ensure the efficiency and effectiveness of the airport project review process.

AAAE and ACI-NA have developed several proposals to improve the environmental approval process for projects that would enhance capacity and reduce delay at the nation's busiest airports. We have worked with environmental, airport planning and development professionals; key FAA staff; and environmental and aviation law experts. Our goal is to expedite the process by which airport operators, and federal and state regulators and environmental agencies review and approve critical airport projects.

The Expedited Airport System Enhancement (EASE) initiative (copy attached) would give priority to critical airport capacity projects within the scope of existing environmental laws and better integrate application of those laws into the process for approving such projects. EASE also seeks to improve procedures at FAA and elsewhere in the federal government to make sure that these critical projects receive prompt and informed attention.

Key provisions of the proposal include the declaration of "Critical National Airport Capacity" Projects, which would eliminate the need for the lengthy off-airport "alternatives" process for such projects; priority processing by involved agencies of Critical Airport Capacity Projects; the establishment of an Airspace System Capacity Enhancement Council or Czar; airport funding of project-specific FAA staff or consultants for expedited review of Critical Airport Capacity Projects; the expansion of categorical exclusions; the facilitation of agreements with local governments to allow additional mitigation for Critical Airport Capacity Projects; the requirement of realistic state air quality implementation plans; and elimination of the duplicative Governor's Certificate.

Conclusion

Although the causes of airline delays are complex, it is clear that adding runway capacity remains a key challenge. In light of the current volume of travel and the projected growth within the next decade, we cannot afford to allow critical capacity enhancing projects such as runway construction at major airports to become mired in an unending process that produces no measurable environmental benefit.

Enactment of a few common-sense procedural changes can make a difference in ensuring that critical projects currently under consideration move forward responsibly and with appropriate environmental sensitivity. Success in this regard will produce profound results throughout the aviation system.

Bringing additional runways on-line is time to meet the billion passengers that the system will face by the end of the decade is critical not only for aviation but also for our whole economy. Expedited runway construction combined with ongoing efforts to modernize the tools to manage air traffic control can go a long way toward reducing airline delays and the accompanying frustration, inconvenience and lost time and productivity.

We look forward to working with you, Senator Hutchison, as well as Senator Rockefeller and other members of the subcommittee to bring about needed reform of this process. Thank you again for the opportunity to testify.

EASE Proposal

Note: All of these proposed measures would be limited to “Critical National Airport Capacity Projects” at a small number of specifically designated airports where delays have serious impacts on the national air transportation system. They would not change the environmental review process or any other laws or procedures with respect to other projects or other airports. Although limited in scope, these changes would produce profound benefits throughout the nation.

- **Declaration of “Critical National Airport Capacity” Projects**

Proposal: FAA shall establish a threshold of total annual hours of delay at the most delay-prone airports. Upon application by the sponsor of an airport having greater than the threshold amount of delay established by FAA, the Administrator shall designate the project at that airport as a Critical National Airport Capacity Project. In legislation, Congress would determine that, at such airports there is no alternative to a Critical National Airport Capacity Project that is consistent with the needs of the national air transportation system; and, Congress shall declare that no alternative other than a project at that same airport that contemporaneously produces equal or greater capacity is reasonable, prudent, feasible or possible for purposes of the Airport and Airways Improvement Act and federal environmental review laws.

The legislation would mandate that the FAA and all other federal agencies would be required to accept that finding as conclusive. Airports would be included only with their consent and could subsequently opt out of the designation.

Explanation: Under existing laws, the FAA and other agencies must determine whether a reasonable alternative exists to a proposed capacity project. This part of the Alternatives Analysis consumes time, money, and effort even when there is no reasonable alternative. The effect of a congressional declaration would be to avoid the delay caused by consideration of off-airport alternatives. This proposal, if enacted, would be a legislative determination that these other off-airport alternatives cannot possibly solve the nation’s airport capacity problems. A side benefit would be to focus analysis on ways to minimize potential adverse environmental impacts through project design and mitigation. It is estimated that approximately 10 –15 airport projects would qualify for designation as Critical National Airport Capacity Projects.

- **Priority Processing By All Agencies of Critical Airport Capacity Projects**

Proposal: Require by law or executive order that FAA and all other agencies conduct environmental reviews of Critical National Airport Capacity Projects on a “highest priority” basis.

Explanation: Much of the delay in environmental processing occurs outside the FAA, at other agencies. Although proper review by those agencies may take some time, this proposal would ensure that no additional time is lost while the proposal awaits the agencies’ attention. The Executive Order implementing this initiative would compel the agencies to provide adequate staffing and funding to insure compliance with the existing CEQ-established deadlines.

- **Airspace System Capacity Enhancement Council/Czar**

Proposal: Create a Council/Czar appointed by and reporting directly to the President to coordinate review of federal agency actions as they affect capacity enhancement and environmental review.

Explanation: The Council/Czar would be responsible for examining and addressing any aspect of the system that impedes the volume of air traffic. It could be granted the authority to exempt projects from environmental and other regulations that are unnecessarily hindering capacity enhancement; or, the Council/Czar could simply facilitate coordination with the Secretaries of Transportation, Interior, Commerce, State and Defense, as well as with the Administrator of EPA, with the Chair of the Council on Environmental Quality and with the Governors. It is important, however, that such a Council not be simply another level of review, with boxes to be checked, and reviewers to be staffed.

- **Airport Funding of Project-Specific Additional FAA Staff or Consultants for Expedited Review of Critical Airport Capacity Projects**

Proposal: By law, executive order, or FAA action, allow airports to provide funds to FAA to hire additional, project-specific staff to supervise and implement reviews of Critical National Airport Capacity Projects. The additional staff would work exclusively under FAA's supervision and would have no obligation to the airport.

Explanation: FAA faces serious resource limitations with environmental processing. This proposal would allow the addition of staff for the most difficult and critical projects without increasing FAA's permanent headcount. This is solely a funding mechanism to allow the airports (and through them, the airports' users) to pay the cost of accelerating project reviews.

- **Categorical Exclusions Expansion**

Proposal: By law, executive order, or FAA action, direct FAA to institute national procedures for excluding specific airport project actions from NEPA review.

Explanation: Categorical exclusions, as currently outlined in FAA Order 5050.4, constitute a successful FAA review tool that ensures compliance with environmental regulations while expediting agency review. Many, if not most major airport projects, receive approval for categorically excluded elements of the project. While extraordinary circumstances and controversy can and do prevent a specific project category from being universally excluded, apron expansions, taxiway expansions, and other capacity enhancing project elements are customarily approved. Legislative expansion would formalize consistent application of NEPA that allows specific categories of a project to be excluded from review based on historical impact findings.

- **Facilitation of Agreements with Local Governments to Allow Additional Mitigation for Critical Airport Capacity Projects**

Proposal: Legislation which would allow directed interpretations of policies on revenue diversion and use of passenger facility charges, noise and access restrictions for Critical National Airport Capacity Projects to improve mitigation of environmental impacts. Encourage FAA to agree to enforceable limits on new runways, where necessary, to ensure timely approval of Critical National Airport Capacity Projects.

- Local airport funds could be used to reach practical mitigation agreements with nearby communities, even if not traditionally permitted under existing rules on revenue diversion and PFC use. This would be tightly controlled to prevent local governments from holding projects hostage until a “ransom” unrelated to the project impacts is paid. There should be a nexus between the to-be-funded project and the airport runway (Note: the implementing statute would acknowledge that these local communities bear a significant impact on the national need for aviation capacity and therefore, this unique exception for the “revenue diversion” restriction may be justified. This cannot be cited as a precedent for non-critical airport capacity projects).
- FAA would be directed to make binding commitments with respect to air space management, runway use, or other operational conditions for Critical National Airport Capacity Projects, where reasonable, and subject to findings that the limitations do not substantially interfere with air traffic efficiency and safety.
- FAA would be authorized to approve noise or access restrictions on use of a new runway which is designated as a Critical National Airport Capacity Project without further compliance with the procedures under the Airport Noise and Capacity Act (ANCA), where such restrictions are fully evaluated in the EIS for capacity improvement, costs and benefits, preservation of at least the existing level of access, where the projects are deemed necessary to avoid delay in project approval/construction and authorized in the Record of Decision.

Explanation: Agreements with local governments surrounding an airport can remove or reduce opposition to a project, saving time and reducing the risk that the project will not be approved. However, those agreements sometimes require funding for purposes not currently approved for use of airport revenues, either because of the application of anti-diversion rules or limits on PFC eligibility. The expansion of mitigation would be limited, to preclude payment of cash bounties or funding of unrelated development that a community desires. Rather, the new authority would cover only costs of reasonable, project-related impacts (as determined by FAA), that go beyond current funding standards. Such expanded funding could include, for example, mitigation of traffic impacts on nearby, non-exclusive airport access roads or repairing building code deficiencies that would otherwise make soundproofing schools or homes ineligible for federal funding.

Some projects would be easier and faster to build if communities could be assured that use of the new runway will be consistent with the assumptions built into the environmental processing (for example, time-of-day and directional limitations, limits on use for departures) but FAA historically has not been willing to give such commitments. Similarly, for those restrictions that might, theoretically, be achievable through an ANCA/Part 161 process, that process may cause added, redundant delay through review of the restriction. FAA has been unwilling to approve any actions under Part 161. In essence, the proposals relating to potential restrictions on new runway use recognize that it may be better to obtain, in a timely manner, a capacity benefit that may be less than a project’s full physical capacity, rather than to hold out for an unrestricted project that may be inordinately delayed or never achieved.

• **Require Realistic State Air Quality Implementation Plans**

Proposal: Require State Implementation Plan (SIP) inventories to be revised within 180 days of enactment of legislation to base air quality emissions inventories at airports having Critical

National Airport Capacity Projects upon FAA's Terminal Area Forecast for that airport, or an alternate forecast approved by FAA.

Explanation: If a region does not meet national ambient air quality standards, the state is required to prepare a state implementation plan (SIP), that regulates emission sources. The Clean Air Act prohibits FAA from approving an airport project if it will interfere with the SIP. If the SIP already includes an allowance for the project, this process is simple and causes no delay. If the SIP does not include such an allowance, months or years can be lost collecting and analyzing data, and negotiating with air quality agencies. Many SIPs contain unrealistically low airport emissions budgets, and few realistically anticipate reasonable airport growth. Mandatory SIP revisions that realistically account for airport activity would eliminate this major source of delay and risk.

- **Eliminate Requirement under 49 USC § 47106(c)(1)(B) for Governor's Certificate**

Proposal: Eliminate, in its entirety, the requirement that each state certify that federally funded airport projects comply with applicable air and water quality standards.

Explanation: This certificate requirement, contained in the Airport and Airway Improvement Act, duplicates existing compliance and conformity rules under the Clean Air Act and Clean Water Act.